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In the

# Supreme Court of the United States

**THE STEEL COMPANY, a/k/a CHICAGO STEEL AND PICKLING COMPANY,**

*Petitioner,*

v.

**CITIZENS FOR A BETTER ENVIRONMENT,**

*Respondent.*

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## BRIEF AMICI CURIAE OF THE CHEMICAL INDUSTRIES COUNCIL OF ILLINOIS, THE MID-AMERICA LEGAL FOUNDATION, AND THE ILLINOIS MANUFACTURERS ASSOCIATION IN SUPPORT OF PETITIONER

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## IDENTITY AND INTEREST OF AMICI CURIAE[1]

Pursuant to Supreme Court Rule 37.2, The Chemical Industries Council of Illinois, Illinois Manufacturers Association, and Mid-America Legal Foundation respectfully submit this brief as amici curiae in support of the Petitioner. The members of the amici Illinois Manufacturers Association and Chemical Industry Council of Illinois are typically subject to the environmental reporting requirements which were at issue in the first *Steel Company* case, and could be subject to the same types of attorneys fees and other costs if sued for purely past violations by parties who, like the Citizens for a Better Environment, lack standing to bring matters before the federal courts. Written consent to this appearance was granted by counsel for all parties.

The Mid-America Legal Foundation and the Illinois Manufacturers Association were permitted to address this Court as *amici curiae* in the Court's consideration of the original *Steel Company* case. The Chemical Industries Council of Illinois did not participate in that case, but has a membership with similar interests to those of MALF and IMA. Their members would be as significantly affected by an adverse result in this attorney's fees matter as they would have been by a decision other than that which the Court reached on standing. The business communities they represent largely consists of small business organizations, and their background and general description is as follows:

Amicus Mid-America Legal Foundation (MALF) was organized in 1975 as an Illinois not-for-profit corporation to engage in study, analysis, and legal advocacy for the benefit of the general public. MALF endeavors to address evolving

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[1] No part of the attached brief has been authored by counsel for either party. No persons other than the *amici curiae*, its members or their counsel made a monetary contribution to the preparation and submission of this brief.

concepts of law as they affect free enterprise and our democratic institutions, especially where the outcome of litigation could potentially cause disruption to our national commerce, and to provide legal representation on matters of public interest on all levels of the judicial process. MALF takes a special interest in actions that originate in or have a direct effect on the Midwest region.

Amicus Illinois Manufacturers Association (IMA) is an Illinois not-for-profit corporation founded in 1893 and is the oldest and largest statewide manufacturing association in the United States. IMA's membership numbers more than 4,700 Illinois manufacturing companies which employ over 80 percent of the total Illinois manufacturing workforce.

Amicus Chemical Industry Council of Illinois is the organization representing the chemical industry in Illinois. Currently, CICI has over 188 members who employ over 62,000 people in Illinois. The state's chemical industry produces over $23 billion worth of product each year, making it the third largest manufacturing sector in Illinois. In fact, 1.3 million Illinois employees work in industries dependent on chemical products.

## SUMMARY OF ARGUMENT

I. The Issue: This case presents the question of whether a party who commenced litigation without standing to bring such a suit may be sanctioned under the attorney's fees provision of the Emergency Planning and Community Right-to-Know Act (hereinafter referred to as "EPCRA"). (42 U.S.C. § 11046.) There is a substantial probability that the Seventh Circuit was in error in denying the Steel Company's claims for attorneys fees.

A. Standing to sue is a fundamental element of propriety in federal court proceedings.

B. The statute granting attorneys fees follows the rule at common law.

1. United States practice requires explicit congressional authorization for an award of attorneys fees.

2. Common Law courts can award fees in appropriate amounts to prevailing parties.

3. The attorneys fees statute in question follows the common law rule, and does not distinguish between prevailing plaintiffs and defendants.

4. The plain meaning of the statute should be followed absent strong indications of contrary legislative intent.

5. The legislative history supports a review of the quality of plaintiffs cases, but does not specifically limit the language of the statute.

6. Lower court decisions on environmental fees statutes have used standards other than frivolousness to determine when awards for a successful party are appropriate.

7. Courts and commentators have relied primarily on civil rights statutes and precedents for interpretation of fee shifting statutes. The proper test is more general, and looks specifically at the equities which apply between parties under a fee shifting law.

II. There Are Strong Policy Reasons To Allow Awards To Prevailing Defendants.

A. The Steel Company, like all such defendants, has no choice but to be in court.

B. This Court made the probability of lack of standing to sue clear in several decisions which preceded CBE's filing suit against The Steel Company.

C. Environmental Litigation Organizations Are The Beneficiaries of "Citizens Litigation", Not Disinterested Proponents of the Public Good.

D. CBE and Other Potential Environmental Litigants Are Well Funded National Organizations, Not Impecunious Individuals. The Steel Company Is A Relatively Small Business.

III. Conclusion: This Court should grant certiorari and reverse the decision of the seventh circuit court of appeals holding successful defendants to a more difficult standard for obtaining an award of attorney's fees.

## ARGUMENT

**I. The Issue: This case presents the question of whether a party who commenced litigation without standing to bring such a suit may be sanctioned under the attorney's fees provision of the Emergency Planning and Community Right-to-Know Act (hereinafter referred to as "EPCRA"). (42 U.S.C. § 11046.) There is a substantial probability that the Seventh Circuit was in error in denying the Steel Company's claims for attorneys fees.**

This Court made the determination that Citizens for a Better Environment lacked standing in *Steel Company v. Citizens for a Better Environment,* 118 S.Ct. 1003 (1998). Subsequent to that determination, the Steel Company sought attorney's fees pursuant to EPCRA, as a "prevailing party." Both the District Court and the Seventh Circuit have rejected this claim, and the Steel Company has petitioned this Court to review the Seventh Circuit's determination in *Citizens for a Better Environment v. Steel Co.,* No. 99-2709 (7th Cir. Oct. 17, 2000). This brief *amici curiae* supports the Steel Company's petition for certiorari.

### A. Standing to sue is a fundamental element of propriety in federal court proceedings.

Standing to sue is a fundamental element of propriety in federal court proceedings. The Court has clearly established

a standing requirement and has grounded this requirement in Article III, section 2 of the Constitution, which grants the judiciary the power to hear "cases" and "controversies." The requirement that litigants demonstrate their standing to sue under the Constitution, the Court has said, confines the judiciary to its properly limited role in our system of separated powers, and helps ensure that cases filed in federal court involve the type of well-defined, adversarial contests which the courts are institutionally competent to resolve. (*See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471-6 (1982); *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 151 (1969).)

The Seventh Circuit, while recognizing Citizens for A Better Environment's lack of standing, ruled that the group's original suit was not "frivolous", and that the Steel Company's application for attorney fees should therefore be denied. (*Citizens for a Better Environment v. Steel Co.*, No. 99-2709 (7th Cir. Oct. 17, 2000).)

**B. The statute granting attorneys fees follows the rule at common law.**

**1. United States practice requires explicit congressional authorization for an award of attorney's fees.**

Attorney's fees generally are not a recoverable cost of litigation absent explicit congressional authorization. (*Runyon v. McCrary*, 427 U.S. 160, 185 (1976).) The Runyon Court, like many earlier decisions, followed the holding in *Arcambel v. Wiseman*, 3 U.S. (3 Dall.) 306 (1796), in which the inclusion of attorneys' fees as damages was overturned on the ground that "[t]he general practice of the *United States* is in opposition [sic] to [fee shifting]; and even if that practice were not strictly correct in principle, it is entitled to the respect of the court [sic], till it is changed, or modified, by statute." (*Arcambel,* 3 U.S. (3 Dall.) at 306.) The

*Arcambel* holding differed from the "British Rule" applicable at common law.

**2. Common Law courts can award fees in appropriate amounts to prevailing parties.**

In England, fee-shifting (awards of attorneys' fees to prevailing parties in litigation) is authorized at the discretion of the court by statute. (*Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 717 (1967).) Consequently, fee-shifting has been consistently and freely allowed in favor of prevailing parties since the year 1278. (*Id.*) Virtually every other legal system in the world also consistently awards attorneys' fees to prevailing parties. (*See generally* Walter K. Olson, *The Litigation Explosion* (1991).)

**3. The attorneys fees statute in question follows the common law rule, and does not distinguish between prevailing plaintiffs and defendants.**

The attorney's fees provision of EPCRA provides that attorneys fees may be awarded to a "substantially prevailing party" whenever the court finds the award to be "appropriate." (42 U.S.C. § 11046(f).) On its face, this provision would appear to do no more than restore the fee allocation rule applicable at common law. No preference in awards for either plaintiffs or for defendants is stated in the plain language of the statute.

**4. The plain meaning of the statute should be followed absent strong indications of contrary legislative intent.**

Ordinary canons of statutory interpretation do not call for courts to go beyond the four corners of the statute, where the meaning is clear. (*Caminetti v. U.S.*, 242 U.S. 470

(1917); *U.S. v. Revis*, 22 F. Supp. 2d 1242 (N.D. Okla.1998).) Legislative history is irrelevant to an unambiguous statute. (*In Re Moore*, 907 F.2d 1476 (4th Cir. 1990.)) Courts are bound to give effect to the literal meaning without consulting other indicia of intent or meaning when the meaning of the statutory text itself is plain or clear and unambiguous. (*American Tobacco Co. v. Patterson*, 456 U.S. 63 (1982).) Remarks of a legislator, even the sponsor of a bill, will not override the plain meaning of a statute. (*U.S. v. Tabacca*, 924 F. 2d 906 (9th Cir. 1991).)

Absent some indication to the contrary, a reasonable interpretation of the statute's plain meaning would appear to support application of the common law rule for allocation of responsibility for attorney's fees. The discretion of the court to award fees "where appropriate" which the statute provides for does not, again, differ significantly on its face from the similar discretion provided English courts under the common law rule. Any prevailing party should, under that rule, ordinarily be made whole by an appropriate award of attorney's fees from the party that loses. If a term used in a statute has a settled legal meaning, then courts will normally infer that the legislature intended to incorporate the established meaning. (*Martin v. Luther*, 689 F.2d 109 (7th Cir. 1982).) If a term has a common-law meaning, then such meaning may be preferred in a court's interpretation of a statute. (*Standard Oil of New Jersey v. United States*, 221 U.S. 1 (1911); *McCool v. Smith*, 1 Black (66 US) 459 (1861); *U.S. v. Palmer*, 3 Wheat (16 US) 610 (1818).)

**5. The legislative history supports a review of the quality of plaintiffs cases, but does not specifically limit the language of the statute.**

There is little substantive legislative history on attorney's fees provisions in environmental statutes. (Miller, "Private Enforcement of Federal Pollution Control Laws, Part III,"

14 ELR 10407, at 10409 (November 1984).) Reference is therefore usually made to the legislative history of Section 304 of the Clean Air Act of 1970 (42 U.S.C. 7604), the first of several environmental statutes containing similarly worded attorneys fee provisions. (*See* 42 U.S.C. 7607.) The Senate report for that bill noted that many Senators feared that Section 304 would be used to bring frivolous and harassing actions. An appropriateness standard, the Senate decided, "should have the effect of discouraging abuse of this provision, while at the same time encouraging the quality of the actions that will be brought." (S.Rep. No. 1196, 91st Cong., 2d Sess. 38 (1970).)

**6. Lower court decisions on environmental fees statutes have used standards other than frivolousness to determine when awards for a successful party are appropriate.**

Federal courts have found fees appropriate where a prevailing party has made a "substantial contribution" to reaching the goals of the statute. (*See Environmental Def. Fund v. EPA*, 672 F.2d 42 (DC Cir. 1982); *Village of Kaktoriak v. Watt*, 689 F. 2d 228 (DC Cir. 1982); *NRDC v. EPA*, 484 F. 2d 1331 (1st Cir. 1973).) The Senate Report's concern with "frivolous and harassing" actions would certainly appear to apply to actions brought by persons without standing to be in court in the first place. The statutory provision, on its face, does not require a finding of frivolousness by the other party to permit an award of attorney's fees.

Other courts have also held that a "prudent effort" standard should apply, which tests whether the suit was of a nature which the statute can fairly be read to have anticipated. (*See Northern Plains Resource Council v. EPA*, 670 F.2d 847 (9th Cir. 1982); *Metropolitan Washington Coalition for Clean Air v. District of Columbia*, 639 F.2d 802 (D.C. Cir. 1981).)

**7. Commentators have relied primarily on civil rights statutes and precedents for interpretation of fee shifting statutes. The proper test is more general, and looks specifically at the equities which apply between parties under a fee shifting law.**

Commentators opposing fees for prevailing defendants in environmental actions have relied on a non-environmental case, *Christiansburg Garment Company v. Equal Employment Opportunity Commission,* which held that, under the fee-shifting provision of Title VII of the Civil Rights Act of 1964, fees should not be awarded to prevailing defendants unless the district court finds "that the plaintiff's action was frivolous, unreasonable, or without foundation." (*Christiansburg v. EEOC*, 434 U.S. 412, 421 (1978).) This case is significant authority, but is not evidently controlling for all fee shifting statutes. These vary in their terms. In descending order, the prevailing plaintiff's or defendant's "entitlement" to attorneys' fees is strongest under relatively equal statutes like the Copyright Act, 17 U.S.C. § 505 (1994), strong but not unequivocal under 42 U.S.C. secs. 1988 (civil rights) and 12205 (disabilities), and always in serious question under the Employee Retirement and Income Security Act (ERISA), 29 U.S.C. sec. 1132(g)(1). The ERISA provision is actually less strong in allowing an award to the usual defendant (the employer) than the "prevailing party" language of EPCRA is for a defendant company. ERISA provides that

> In any action under this subchapter . . ., the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

29 U.S.C. sec. 1132(g)(1).

Courts interpreting the ERISA provision have come up with a balancing test that may be relevant in considering the similar provisions of EPCRA. In *Gray v. New England Telephone and Telegraph Company*, 792 F.2d 251 (1st Cir. 1986), the court held that:

> "This discretion is not standardless. To channel its exercise, this court has cited five basic factors that customarily should be weighed in the balance: (1) the degree of culpability or bad faith attributable to the losing party; (2) the depth of the losing party's pocket, i.e., his or her capacity to pay an award; (3) the extent (if at all) to which such an award would deter other persons acting under similar circumstances; (4) the benefit (if any) that the successful suit confers on plan participants or beneficiaries generally; and (5) the relative merit of the parties' positions. See id. at 257-58. . . . The circuits agree that such compendia are exemplary rather than exclusive. . . . An inquiring court may—indeed, should—consider additional criteria that seem apropos in a given case. . . . In a word, the test for granting or denying counsel fees in an ERISA case is "flexible."

*Gray*, 792 F.2d at 258.

This Court, in *Pennsylvania v. Delaware Valley Citizen's Council for Clean Air*, 478 U.S. 546 (1986), addressed fee awards for plaintiffs in post-trial administrative proceedings, and held in that case that similar post-trial stage awards were allowable in an environmental suit for matters which had been held to be "reasonable" elements of attorneys fees in earlier civil rights cases. The Christianberg and other civil rights cases which were cited in *Delaware Valley* would, as that case was decided, apply only to the amount of any award, not to which party should receive same. The Court's decision did not address a standard of when an award to defendants would be appropriate, or whether the standard should be different from that applicable to plaintiffs.

The appropriate test, in other words, is not one which rewards one type of prevailing party over another. Rather, the standard courts should apply in interpreting a facially

neutral "prevailing party" attorneys fee awards statute is one of fairness and equity. In the absence of specific statutory language directing that awards go only to prevailing plaintiffs, a consideration of the equities such cases, and the general policy favoring compliance rather than penalty seeking as the primary goal of environmental enforcement, which would discourage litigation like that brought by CBE, may be appropriate.

## II. There Are Strong Policy Reasons For This Court To Review The Decision To Deny Awards To Prevailing Defendants.

### A. The Steel Company, like all such defendants, has no choice but to be in court.

In this case, the Steel Company had no choice but to be in court in the first instance, as it was the defendant in a case brought by Citizens for a Better Environment. Whether the Steel Company was prudent in defending itself, instead of settling, and whether CBE was merely engaged in unreasonable harassment, can best be determined by reviewing the cases on standing to sue for past actions which this Court had decided prior to the *Steel Company* decision.

### B. This Court made the probability of lack of standing to sue clear in several decisions which preceded CBE's filing suit against The Steel Company.

The *Steel Company* decision which held that CBE was without standing to sue for past actions was only the most recent of several Court opinions which it clear that the proper interpretation of environmental statutes on citizen suits, and of Constitutional provisions relative to standing to bring action, encouraged citizen suits to prevent and eliminate ongoing violations of environmental laws, but prohibited them from suing for past actions.

On statutory interpretation, the leading case is *Gwaltney v. Chesapeake Bay Foundation.* (484 U.S. 49 (1987).) The case is consistent with the recent direction of Supreme Court standing doctrine. In that case, the Court held that the Clean Water Act citizen suit provision does not authorize filing suit based on violations which occurred wholly prior to the commencement of the litigation.

For standing in environmental cases, counsel for CBE and for the Steel Company should certainly have made their clients aware of the Court's holding in *Lujan v. National Wildlife Federation (Lujan I).* The Court, by a vote of 5 to 4, ruled that the National Wildlife Federation lacked standing to challenge a decision of the Bureau of-Land Management (BLM) to review the classification of federal lands and open them to various kinds of resource development. The Federation contended that the BLM had acted in violation of the Federal Land Policy and Management Act and had failed to prepare an environmental analysis as required by the National Environmental Policy Act. To establish its standing, the Federation filed affidavits of several of its members who asserted that they used land "in the vicinity" of federal lands affected by the agency's decision, and that opening these lands to development would interfere with "recreational use and aesthetic enjoyment" of the lands. (*Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990).)

The Court further elaborated on standing doctrine in a second Lujan case. (*Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1992).) The most significant aspect of Lujan II is Justice Scalia's rejection of the idea that Congress can confer standing by adopting an expansive citizen suit provision. Defenders sought to establish its standing based on the provision of the Endangered Species Act which authorizes "any person" to bring a civil suit "to enjoin any person . . . who is alleged to be in violation of any provision of this chapter." To permit Congress to confer standing through such a provision, Justice Scalia said, would authorize in-

dividuals to sue to enforce the "undifferentiated public interest" in seeing that the laws are enforced. This would violate the principle of separation of powers, according to Justice Scalia, by "enabl[ing] the courts, with the permission of Congress, to assume a position of authority over the governmental acts of another and co-equal department." The Justice, in this, echoed Congressional concerns noted in *Gwaltney*:

> "[T]he Committee intends the great volume of enforcement actions [to] be brought by the State."

(*Gwaltney of Smithfield, Ltd. v. Cheasapeake Bay Found., Inc.*, 484 U.S. 49, 60 (1987), *quoting* S.Rep. No. 92-414, at 64 (1971).)

In light of the substantial caselaw and Congressional history concerning the proper role of citizen suits—pollution prevention, not criminal or quasicriminal prosecution for past misdeeds—an award of attorney's fees to the Steel Company for costs incurred in the course of reasserting existing standing and statutory doctrine would not seem unreasonable.

### C. Environmental Litigation Organizations Are The Beneficiaries of "Citizens Litigation", Not Disinterested Proponents of the Public Good.

Environmental organizations have benefited substantially from citizen suit settlements and judgments. Due to the anti-business bias of many of the environmental organizations that engage in citizen suits, private industry is subject to more legal actions than either agricultural activities or governmental facilities. For example, between 1984 and 1988, environmentalist citizen suits against private industry were more than six times as common than suits against governmental facilities. (Michael Greve, "Private Enforce-

ment, Private Rewards," in *Environmental Politics: Public Costs, Private Rewards*, M. Greve and F. Smith, eds. (New York: Praeger, 1992), p. 111.) Some environmental groups have found that citizen suits can be a lucrative source of revenue (*Ibid.*, pp. 109-110.)

Such organizations may benefit directly from litigation expense awards or attorney's fee awards above the actual costs incurred. (*See, e.g. Environmental Defense Fund v. EPA*, 672 F.2d 42, 58 (D.C. Cir. 1982), *and see also Student Pub. Interest Research Group v. AT&T Bell Labs*, 643 F. Supp. 961 (D.N.J. 1986).) Where cases are settled, the groups usually demand that substantial amounts be paid through other environmental groups for "supplemental", "mitigation", or "credit" programs. (Greve, Michael S., "The Private Enforcement of Environmental Law", 65 *Tulane Law Review* (1990), pp. 339 *ff.*, *at* page 356.)

The use of supplemental environmental projects has been subject to increasing scrutiny. See, e.g., Mann, David S., Comment, "Polluter-Financed Environmentally Beneficial Expenditures: Effective Use or Improper Abuse of Citizen Suits Under the Clean Water Act?", 21 ENVTL. L. 175 (1991); Stevens, Michael Paul, Note & Comment, "Limits on Supplemental Environmental Projects in Consent Agreements to Settle Clean Water Act Citizen Suits", 10 GA. ST. U. L. REV. 757 (1994).

Citizen suit plaintiff organizations are not, therefore, properly regarded as purely altruistic guardians of an abstract public good. They are economic actors who can obtain substantial benefits from litigation. Citizens for a Better Environment is not a poverty-stricken individual with no recourse but an equal employment opportunity action. It is a national organization, and part of a set of well funded national environmental organizations, with active litigation programs, and substantial receipts to date from a wide variety of environmental litigation. The Court can direct

such private prosecutors to their proper duties by any means it determines to be appropriate, including attorneys fee awards where they ignore its relevant precedents and the text of the notice provision of the statutes pursuant to which they bring suit, without putting such organizations out of business.

**D. CBE and Other Potential Environmental Litigants Are Well Funded National Organizations, Not Impecunious Individuals. The Steel Company Is A Relatively Small Business.**

The relative sizes and abilities to bear the costs of counsel of the parties litigant do not indicate that the citizen litigants are "impoverished." Citizens for a Better Environment is, like other major environmental organizations which could bring similar suits in later actions, a nationwide organization. It had over 30,000 members and 180,000 contributors in 1995. (Complaint, paragraph 6.) CBE's Illinois office filed a Form 990 for tax year 1999 which indicated receipt of contributions of $1,932,456 in direct and indirect contributions. The Form 990 for 1997 indicated contributions of $2,030,582. (Source: www.guidestar.org, accessed March 9, 2001.) The Environmental Law and Policy Center of the Midwest, which appears as counsel for CBE in this matter, is another example of how well funded potential environmental organization plaintiffs can be. Data from the Guidestar website, which provides information from annual Form 990's for 640,000 organizations, profiles the ELPC as follows:

> **Financial Info**
> **Fiscal Year:** 1999
> **Assets:** $5,283,084
> **Income**: $3,430,000

(Source: http://www.guidestar.org/search/report/gs-report.adp?ein=36-3866530&org_name=&keywords=&

city=&state=IL&zip=&proximity=&subject=environment_all&foundn_irs=&revenue_cd=, accessed March 9, 2001.)

The Steel Company, by contrast, is a manufacturing organization which at the time of the litigation had approximately 100 employees. This is relatively small for the steel industry. For a company of this size, like any small manufacturing business, more than $270,000 in attorneys fees and costs to defend a case against a party without standing to bring suit is a substantial penalty. (Source for fee and cost amount: Stipulation cited in Petition for Writ of Certiorari, p. 8.)

## III. Conclusion: This Court Should Grant Certiorari and Reverse the Decision of the Seventh Circuit Court of Appeals Holding Successful Defendants to a More Difficult Standard for Obtaining an Award of Attorney's Fees.

As set forth above, there are ample policy and legal reasons for this Court to review and reverse the decision of the Seventh Circuit Court of Appeals. The practical effect on enforcement of a decision to award attorney's fees to the Steel Company should also be considered. Allowing successful defendants to recover attorney's fees in a case such as this will not discourage well brought citizen suits; it will insure that they are pursued only when necessary to abate ongoing violations. Moreover, the Congressional Research Service, when reviewing the effect of the Court's earlier Steel Company decision, concluded that:

> If *Steel Co.* and *Laidlaw* (widely adopted) ultimately do reduce the number of citizen suits and their value as incentives for advance compliance, one should not assume that rampant flouting of environmental and other regulations will result. Nothing in these decisions impairs the enforcement ability of federal agencies, or state agencies under delegated federal programs.

(Robert Meltz, Congressional Research Service, Report for Congress, RS20012: *The Future of the Citizen Suit After Steel Co. and Laidlaw*, January 5, 1999, http://www.cnie.org/nle/rak-38.html#Back15, accessed February 8, 2001.)

A decision for the Steel Company on award of fees will insure that other relatively well funded environmental organizations will be encouraged to remember that Congress had a good reason for putting in EPCRA and similar environmental statutes the 60-day notice to prosecutors and the alleged violator. If a governmental prosecution is commenced or the alleged violator comes into compliance, the environmental group has fulfilled its mission and has no business proceeding.

The overarching goal of the citizen suit provisions is compliance, not punishment. It is respectfully submitted that it is in the interest of proper administration of the law and public policy for this Court to grant the Petition and ultimately reverse the decision below.

Respectfully submitted,

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